

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

THE DEPARTMENT OF REVENUE)	
OF THE STATE OF MONTANA,)	
)	
)	DOCKET NOS.: PT-2003-106
Appellant,)	and PT-2003-107
)	
-vs.-)	FACTUAL BACKGROUND,
)	CONCLUSIONS OF LAW,
BRUCE & SUSAN TATE,)	ORDER and OPPORTUNITY
)	<u>FOR JUDICIAL REVIEW</u>
Respondents.)	

The above-entitled appeals were heard on September 14, 2004, in the City of Kalispell, Montana, in accordance with an order of the State Tax Appeal Board of the State of Montana (the Board). The notice of the hearing was duly given as required by law.

The Department of Revenue (the DOR), represented by Appraiser Carolyn Carman and Scott Williams, Region One Lead, presented testimony in support of the appeal. Bruce and Susan Tate and Don McBurney presented testimony in opposition to the appeal.

The duty of the Board is to determine the market value of the taxpayers' property based on a preponderance of the evidence. The State of Montana defines "market value" as **MCA §15-8-111. Assessment - market value standard - exceptions.** (1) All taxable property must be assessed at 100% of its market value except as otherwise provided. (2)(a) Market value is a value at which

property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having a reasonable knowledge of relevant facts.

The DOR is the Appellant in this proceeding and therefore has the burden of proof. It is true, as a general rule, that the appraisal of the Department of Revenue is presumed to be correct and that the taxpayer must overcome this presumption. The Department of Revenue should, however, bear a certain burden of providing documented evidence to support its assessed values. (Western Airlines, Inc., v. Catherine Michunovich et al., 149 Mont. 347, 428 P.2d 3, (1967)).

Based on the evidence and testimony presented, this Board reverses the decision of the Flathead County Tax Appeal Board.

FACTUAL BACKGROUND

1. Due, proper and sufficient notice was given of this matter, the hearing, and of the time and place of the hearing. All parties were afforded opportunity to present evidence, oral and documentary.
2. The Board has jurisdiction over this matter in accordance with **§15-2-301, MCA.**
3. The properties which are the subject of these appeals are described as follows:

PT-2003-106: Land only, described as the east 75' of the SW 275', Block 1, Tract 3, Lake Park Addition to the City of Whitefish, located in Dog Bay, west shore of Whitefish Lake, County of Flathead, State of Montana.

PT-2003-107: Land only, described as part of Tract 4 in Block 1, Lake Park Addition to the City of Whitefish, located in Dog Bay, west shore of Whitefish Lake, County of Flathead, State of Montana.

4. For tax year 2003, the DOR appraised the land under Docket Number PT-2003-106 at \$314,325, and the land under Docket Number PT-2003-107 at \$81,081. A correction was made to the front footage measurement, resulting in a land value of \$333,906 for Docket Number PT-2003-106. This is the value the DOR is requesting of this Board.

5. In its February 13, 2004 decision (PT-2003-106), the County Board adjusted the land value to \$258,906, stating:

It is the decision of the Board that the value of the LAND be adjusted to \$258,906. The DOR is ordered to place this value on the land for the tax year 2003 (ATTACHMENT).

6. In its February 13, 2004 decision (PT-2003-107), the County Board ordered and adjustment for the land, stating:

It is the decision of the Board that the value of the LAND be adjusted to "nonbuildable status." The DOR is ordered to place value as per new status for the 2003 tax year.

7. The DOR then appealed the County Board's decisions to this Board on March 12, 2004, citing the following reasons for appeal:

The nature of the proof adduced at the hearing was insufficient, from a legal and a factual standpoint, to support the Board's decision.

STATEMENT OF THE ISSUE

The DOR appealed the Flathead County Tax Appeal Board's decision that "ordered" a reduction in value for Tract 3 to reflect a value of \$258,906. In addition, the DOR appealed the Flathead County Tax Appeal Board's decision for Tract 4, which "ordered" the DOR to value the lot as "nonbuildable". The Board did not establish a value based upon this determination.

The taxpayer did not appeal the Flathead County Boards decision. By not appealing these decisions, the taxpayer has accepted the results.

DOR'S CONTENTIONS

Regarding the property under Docket Number PT-2003-107 (part of Tract 4), Ms. Carman presented DOR Exhibit A, photographs of the subject property. DOR Exhibit B is copy of the property record card for Tract 4, showing corrections made by the DOR to frontage and depth measurements. The DOR considers this tract to be non-buildable. The taxpayers purchased the property described as part of Tract 4 in 1985 as a buffer zone for their residential property. There are restrictions in developing this parcel that are attached to the deed. When the DOR was conducting its research for this parcel in response to the AB26 filed, it attempted to value this property in a similar manner to properties that are non-buildable, or recognizing sales of property that were affected by the same constraints. Using only residual pricing and applying a 30 percent

discount, the DOR determined a front foot value of approximately \$410 for the property described as part of Tract 4, with 198 feet of lake frontage. The 30 percent reduction was an appraiser's judgment after analyzing sales from the non-buildable portion of the lake. This reduction amount has also been used for other properties with swampy areas on the lake, according to Ms. Carman.

Exhibit E compares the subject valuation with three properties deemed comparable to the subject. This exhibit is a listing of three land sales, which attempt to justify the \$410 per front foot valuation on part of Tract 4. Properties 1 and 2 of these comparable properties are on a side of Whitefish Lake that are accessible by boat only and are in close proximity to a Burlington Northern railroad line. Ms. Carman stated that these are both rocky and steep properties with uneven shorelines. They sold for \$708 and \$679 per front foot in 2002 and 2003, respectively.

Property three, with 21 front feet of lake, sold for \$6,059 per front foot in November of 2002. The DOR contends that this sale illustrates the premium price that people who already own a parcel are willing to pay for extra frontage, or a buffer zone, or for land in which to install a septic system for a parcel that they already own.

DOR Exhibit F is a document entitled "Land Value Regression for Frontage and Depth", and contains the actual sales that were used in valuing the subject part of Tract 4 and the neighborhood in

which it is located (210), which contains non-buildable parcels on Whitefish Lake. The exhibit contains sales information pertinent to six properties and they range from \$35,000 to \$91,000. The price per front foot on these sales ranged from \$180 to \$824. The subject property, described as part of Tract 4 was valued in the manner in which it was because it is a non-buildable parcel.

Ms. Carman stated that no valuation difference exists between the previous classification of the land (irregular lot) and non-buildable. Because the county board changed the land classification to non-buildable, Ms. Carman made that change but it did not result in a value change. Irregular frontage and non-buildable classification result in the same valuation treatment. Ms. Carman noted that the taxpayers had concerns regarding the descriptions on the property record card relating to topography, utilities, access, fronting, and location. Those designations have no value influence, but Ms. Carman did correct them according to the taxpayers' wishes: topography (swampy); utilities (none); access (river or waterway); fronting (residential lane); location (central business district). Ms. Carman stated that the property described as part of Tract 4, Block 1 is very marshy and is not prime lake frontage.

DOR Exhibit C provides an appeal history for the property described as part of Tract 4 in Block 1:

On 7/21/03 Mr. Tate filed an AB26 [for property review] asking for a reduction of value on this property. On 8/18/03 Gerald (DOR employee) adjusted the value by applying a 30% reduction and applying irregular lot size pricing of 1,300/1,300

$$165 \times 1,300 = 214,500 \times .75 \times .70 = 112,613$$

In preparing for CTAB, Tim [Norton] found that the lot size was incorrect. So he corrected it to 198 X 46 per Book & Page 533 & 746 (the document description goes to low water mark with 299 FF. Tim used the high water mark of 198FF. This is in the landowner's favor).

$$198 \times 1,300 = 257,400 \text{ depth factor is calculated by actual depth } 46/\text{standard } 225 = .20 \text{ The square foot of } .20 \text{ is } .45$$

$$257,400 \times .45 = 115,830 \times .70 = 81,081 \text{ (a 30 percent reduction was given because this lot has building restrictions. It cannot be built upon).}$$

$$81,081 / 198 = 409$$

Irregular shape FF pricing and non-buildable FF pricing are the same \$1,300/\$1,300 so to satisfy the request of the CTAB the change in land type has been made. With no change in valuation.

Property:

E 75 ft of SW 275 ft Block 1 (Tract 3)

Pricing in this area is as follows:

Standard lot size is 100 X 225

Standard water front pricing is \$3,500/\$1,300

Depth factor is figured by using the square root of (actual depth/standard depth).

This lot size was described as 126 X 170 the value is \$333,906.

$$100 \times 3,500 = 350,000 \text{ depth factor is } 170/226$$

$$\underline{26 \times 1,300 = 33,800} \text{ the square root of } .75 \text{ is } .87$$

$$\text{Totaling } 383,800 \times .87 = \$333,906$$

The subject neighborhood is priced at \$1,300 on the first 100 feet of lake frontage and \$1,300 on any residual footage.

Ms. Carman presented sales information and photographs (DOR Exhibits D, E, F, G and H) pertinent to the valuation of the subject properties. Buildable property on Whitefish Lake, in 2002,

was starting at \$3,000 per front foot and escalates from there to \$10,000. Whitefish Lake is probably the most desirable land in Montana.

Regarding the parcel of land under PT-2003-106 (the east 75' of the southwest 275' of Block 1, Tract 3 - hereinafter, Tract 3), the DOR presented Exhibit I, the property record pertinent to the property. A front footage adjustment from 75' to 126' and a depth correction from 220' to 170' were made, in response to the filing of an AB 26 form for property review. The DOR made this determination upon review of a copy of the deed (Exhibit D). The deed references a shoreline measurement of 126'.

Tract 3 contains the taxpayers' residence. It lies in a protected bay. The property looks out across Lion Mountain and some Burlington Northern trackage, but does not have a view of a populated area, according to Ms. Carman. The lakeshore along the subject property is a silty, marshy bottom. The State Park was there before the taxpayers purchased the property.

Tract 3 is appraised at \$2,650 per front foot for its 126 feet of lake frontage, which is below the average price per front foot shown in the sales below (Exhibit K). DOR Exhibit J is a comparison of the subject appraisal and the sales price and assessed value of three vacant land properties deemed comparable by the DOR. 293 front feet sold for \$1,365,000 in March of 2003, or \$4,659 per front foot. The DOR appraised this property at \$3,908 per front

foot. This property is similar to the subject in its triangular shape and "silty" shoreline.

A parcel containing 50 front feet of lake frontage sold for \$2,900 per front foot in May of 1999. The DOR appraised this parcel at \$6,555 per front foot. According to Ms. Carman, this parcel is very steep where the property meets the water's edge and the beach is rocky.

Another parcel containing 75 front feet of lake frontage sold for \$2,500 per front foot in April of 1997. This sale has not been adjusted for time of sale. The DOR's testimony is that property values in this neighborhood have continued to move upward. The DOR appraised this property at \$3,175 per front foot. This property is "against the Burlington Northern Railroad." Ms. Carman measured 60 feet from the property to the railroad. In addition, it is a very steep property to the water's edge.

The comparable properties are all located along West Lakeshore Drive of Whitefish, as is the subject, and suffer the negative impacts of railroad noise, "silty" beaches, and steepness.

DOR Exhibit K is a copy of all of the sales that were used to value Whitefish Lake properties:

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Sale date	Lot Width/depth	Sale Price	Adjusted Sale Price (for time elapsed between sale Date and valuation date of 01/01/02)	Price per Front Foot
10/24/2000	152/140	\$380,000	\$407,403	\$2,678
3/22/2000	100/207	\$175,000	\$193,638	\$1,936
10/24/2000	77/123	\$155,000	\$166,031	\$2,156
7/26/1999	801/375	\$1,150,000	\$1,317,708	\$1,645
10/3/2000	100/270	\$190,100	\$204,294	\$2,043
12/1/2000	80/350	\$350,000	\$372,750	\$4,659
11/10/1999	90/330	\$335,000	\$378,048	\$4,201
6/10/1997	101/172	\$215,000	\$273,803	\$2,711
3/1/2001	68/397	\$320,000	\$336,000	\$4,941
6/3/1999	125/235	\$195,000	\$225,160	1,801
1/7/1997	89/230	\$175,000	\$227,325	\$2,554
4/4/1997	50/250	\$160,000	\$205,520	\$4,110
8/10/1998	100/225	\$385,000	\$463,348	\$4,633
1/11/2001	100/225	\$500,000	\$529,167	\$5,292
10/13/2000	38/210	\$200,000	\$214,600	\$5,647
5/5/1999	50/300	\$145,000	\$168,103	\$3,362
4/22/1997	75/128	\$187,500	\$240,281	\$3,204
Averages	129/245	\$306,918	\$348.401	#3,387
Standard	100/225			

The DOR's position is that Whitefish Lake property is among the most desirable in Flathead County and, probably, all of Montana. Property values are increasing to the magnitude of 21 to 24 percent per year. Mr. Williams referenced a recent sale of very small piece of lake front property that was purchased for \$10,000 a front foot for the installation of a septic system.

TAXPAYER'S CONTENTIONS

The subject property is located on the west shore of Whitefish Lake in Dog Bay. It's a small, shallow bay, which the taxpayers share with the West Shore State Park. This park has 33 active campsites and very busy boat launch. There are 16-17 other property owners on the opposite side of the bay. The taxpayers'

view across the bay is the main line of the Burlington Northern (BN) Santa Fe railroad.

Two properties are in contention: Tract 3 is an improved lot, which contains the taxpayers' house and garage. Tract 4 is the lot deemed non-buildable and is located between the taxpayers' home and the state park.

Taxpayers' Exhibit 2 is a photograph of the subject property, showing the proximity to the state park and its boat launch. At times, it is the only boat launch available on Whitefish Lake so it is a very busy boat launch.

Taxpayers' Exhibit 3 is a map of the neighborhood showing the subject property at 1800 West Lakeshore. The exhibit shows that the subject properties are bordered on the south by the State Park. Mr. Tate stated that the State Park was not there when his parents purchased Tract 3 on February 9, 1954, when Mr. Tate was nine years old. The State Park came into being in 1958. It became a full service park in the mid-sixties. In the 1990's, the campsites were expanded so it now accommodates 33 tents and/or trailers. It is the only public access for camping on Whitefish Lake so it is very heavily used.

When his parents bought the land, there was a small cabin on it where the taxpayers' back yard is now located. The taxpayers have constructed a modest home on this property.

Both Tracts 3 and 4 are triangular shaped, unlike most of the other lots in the neighborhood. The majority of the lots run perpendicular to the lakeshore.

Taxpayers' Exhibit 4 contains a demonstrative exhibit containing a sample of the silt found on the properties' shoreline, which is a gray clay causing the bottom of the east side of the bay, on which the subject properties are located, to be deeply with covered with a muddy silt. The exhibit, along with Taxpayers' Exhibit 7, also contains a series of photographs of Mr. Tate standing in the shallow, muddy water along the shoreline to the properties. This is in sharp contrast to the rock and stone bottom found in the deeper west side of Dog Bay. Another photo shows the fence line bordering Tract 4 and the State Park and marshy, swampy quality of the shoreline. In addition, there are several large rocks and a gravel bar that runs north and south to the north end of Tract 3. That gravel bar is very shallow, so boating access to the east side of Dog Bay can be challenging, especially during the summer months when water levels are low. Mr. Tate has spent many of the last 50 years of his life on Dog Bay and has swum the bay many times, a distance of about 400 feet straight west across from his house. He can touch bottom almost all the way across, except for the last 75 or 80 feet, which goes to a deeper depth of about nine feet and up to 20 feet in depth on the west side of the bay.

Taxpayers' Exhibit 6 is a copy of a contour map obtained from the Montana Fish, Wildlife and Parks Department, in support of the taxpayers' arguments regarding the shallow nature of Dog Bay.

Taxpayers' Exhibit 8 is a videotape of a train, and its noise, passing in close proximity to the subject properties and negatively impacting its aesthetic value.

Mr. Tate stated that they only enjoy a very limited view of Whitefish Lake from the back deck of their residence.

Taxpayers' Exhibit 8 is a copy of November 13, 2003 letter from Michael Muldown, a sales associate with Coldwell Banker/Wachholz and Company Real Estate in Whitefish, to the Flathead County Tax Appeal Board. The letter states that Mr. Muldown was asked by Mr. Tate to give an opinion on the relative valuation of his property at 1880 West Lakeshore drive. Mr. Muldown states that he consulted with several other realtors and concludes the following:

- The property in question is in Dog Bay next to the only State Park with overnight camping on Whitefish Lake. The State Park has 33 camp sites.
- The close proximity to this public state park facility negatively impacts the land value and market appeal to many who want to purchase Whitefish lakeshore property.
- The swimming buoys for the state park public beach are placed far out into the bay in front of the Tate property during the summer months, due to the shallow bottom for swimming.
- The park is used for ice fishing access during the winter, and has early morning and late night activity. Though only staffed in the summer, the park is used year-round.
- The BNSF Railroad main line curves around the bay from the south to the northwest, generating significant noise,

and vibration to the home on this property. Approximately 8 of 10 prospective Whitefish lakeshore prospects will not consider buying on the West shore, due to the disruptions caused by the railroad (noise, vibrations, and delays at the crossings. As of this writing there are approximately 37 trains each day over these tracks. (Emphasis supplied).

- The mud bottom along with the poor quality beach (gravel layer and marsh grass over clay) does not make for good swimming conditions, when compared with most of the rest of the lake. A swamp on the south side of the tracks drains into Dog Bay, through the State Park property.

- The shallow mud bottom in Dog Bay is laced with big rocks and a sand bar, making docking a boat very difficult at both the Tate property and the adjacent neighbor's property.

The current market dictates that this type of property on the West Shore would be discounted at least \$1000 per foot in valuation to other more desirable properties on the lake, most of which are on the east shore.

Taxpayers' Exhibit 10 is a photograph of the subject property, taken from State Park, and showing a "very typical July and August for the bay." Mr. Tate stated that this photograph depicts an unusually high water situation due to rains. The photograph shows a very muddy, marshy shoreline.

When Mr. Tate's parents purchased the property, a realtor told them that the property lines ran straight down to the water. A later survey revealed that the side lot lines were, in fact, at a 55-degree angle to the shoreline, not 90 degrees as they were told. Upon learning of the odd shape of the lot, his parents tried unsuccessfully to purchase a wedge-shaped piece to the south to square up a side of Tract 3.

Mr. Tate purchased the property from his mother in 1971, paying fair market value based upon an appraisal. Mr. and Mrs. Tate built their home there, completing it in September of 1975, where they have resided since.

Taxpayer's Exhibit 11 is a map of Tracts 3 and 4 (which they bought in 1985 when they decided to build a garage near the boundary of Tract 3 and 4). Half of the taxpayers' beach, on the north end of Tract 3, is in front of their neighbors to the north. The beach immediately in front of the south half of their home is actually Tract 4.

Tract 3 is 75 feet wide and that legal description, until 2004, has historically always been the footage upon which they have been assessed. The original survey drawing shows how a low water beach measurement of 126.6 feet. This is the new water front measurement that the DOR is charging them on, so they went from 75 feet of width to 126 feet of width. However, because the high water line along the bank is only 118.8 feet, we see the lot shape changes between high and low water, because of the odd shape of the lot, there's a significant different between low waterfront and high waterfront footage. That difference is nearly eight feet. And, from the high water line, there is a 20 foot setback that limits how close one can build to the lake. The taxpayers are requesting a reduction to 119 feet for the footage that they're being charged for because a good part of the year, that's our

waterfront - 118.8 feet. In the spring and early summer, we have 119 feet of waterfront. Few, if any, lots see this type of fluctuation in true water front footage, since the typical lot has sidelines perpendicular to the water. The average lot depth, perpendicular from high water to the back of that lot, is 46 feet. And, after the 20-foot setback, it's only 26 feet and is one of the drivers for that lot not being buildable, per se. It's a pretty unusual and unusable lot.

In 1985, the taxpayers decided to build a garage, which would be located near the south boundary of Tract 3 near the public road (West Lakeshore Drive). That property (Tract 4) was purchased from William Evan Jones and the taxpayers' ownership helped to resolve the threat of someone else building close to the south end of their home and using the beach directly in front of their home. Tract 4 was not considered a good quality because of its odd shape, its shallow depth, and the marshy beach area. Its best value seemed to be as an attachment to Tract 3, since unbuildable and to serve as a buffer between the taxpayers' home and the State Park. When offered in 1985, the State of Montana declined to buy this property, even though it would have been adjacent to the state park.

Taxpayers' Exhibit 12 is a copy of a November 6, 1986 letter to the Department of Revenue from William Jones, describing the particulars of the sale of Tract 4.

Taxpayers' Exhibit 13 is a copy of the declaration of covenants, conditions and restrictions, which, at the request of the Flathead County Commission, the taxpayers filed on September 31st, (sic) 1985. This declaration limits the subject two lots to just one dwelling and, in effect, making Tract 4 non-buildable. This is a 50-year commitment and the document states that it must be renewed after that time has elapsed. The owners agreed this to because the average depth of Tract 4, perpendicular from the high water line, is only 46 feet minus the 20-foot setback.

Taxpayers' Exhibit 14 is a plat map depicting the two subject lots, along with adjacent lots. Mr. Tate argues that other lots have view of and direct access to the main body of the lake, which is an advantage over the subject lots. The other lots enjoy rock beaches and lake bottoms for clear water swimming. There may be slight silt problems but not to the degree experienced in Dog Bay. Mr. Tate contends that the bay was aptly named. The deep water is a positive for those other lots for easy boat entry and egress. Due to the shallow, sometimes brackish, nature of the water found in Dog Bay, it does not meet drinking water quality standards. All of the dwellings in this are draw their water, for home consumption, directly from Whitefish Lake. The taxpayers' water source is a submersible pump located out 450 feet from the house in the main body of Whitefish Lake. They had to go a long way out in

to the lake to find water that meets the state water quality standards.

The city water line runs up from the city to the south end of the lake. The subject property is another mile beyond that. The taxpayers are not in the city limits.

Taxpayers' Exhibit 15 is a photograph taken due west from the house deck in Tract 3 to demonstrate the property lines between the two subject tracts. The photograph shows that there are three cones depicting the angle of boundary separation from Tract 3 and Tract 4.

Taxpayers' Exhibit 16 is a photograph taken facing east from the dock, showing the angle of the property boundaries.

Taxpayer's Exhibit 17 is a photograph showing the entire shoreline on the more desirable west shore of Whitefish Lake, in terms of swimming and beach frontage, because of their rock bottoms and beaches. With their deeper water, they offer better boating ingress and egress. Mr. Tate testified that the West Shore Subdivision contains approximately 17 lots and was developed in 1978. It is located below the BN/SF right-of-way. Each has approximately 100 feet of water frontage. All of these lots are non-buildable by declaration of the Flathead County Sanitarian. They are impacted by the same railroad noise and vibration as the subject lots. These lots are not accessible by road, while the subject Tract 4 is.

Exhibit 18 contains photographs of three properties in the West Shore Subdivision. Lot 15 is 100 feet wide and 80 feet deep. The lot has been assessed by the DOR at \$140 per front foot, with a depth factor of .89, for a total appraised value of \$12,460. Lot 17 is 100 feet wide and 65 feet deep. Lot 17 has been assessed by the DOR at \$140 per front foot, with a depth factor of .89, for a total appraised value of \$11,340. Lot 19 is 100 feet wide and 80 feet deep. Lot 19 has been assessed by the DOR at \$140 per front foot, with a depth factor of .89, for a total appraised value of \$12,460. In contrast, the subject Tract 4, deemed non-buildable as are the above three West Shore Subdivision lots, prior to 2003 reappraisal, was valued at \$12,771. After statewide reappraisal in 2003, Tract 4's appraised value increased to \$218,000. That value was reduced to \$112,000 and is currently at \$81,000, pursuant to taxpayer request for review of appraisal.

The shallow muddy bottoms of both Tracts 3 and 4 are among the worst on the west shore for swimming and boating. The beach is marshy to, at best, a rock veneer over clay. The odd shape of both lots is detrimental to their market value. The location of the lots in the bay, basically looking across at Lion Mountain, limits the view of the main body of Whitefish Lake to only 30 to 35 degrees, compared to 150 to 180 degree view for most other lots on the west shore. Proximity across the water from the BN/SF tracks gives the taxpayers the effect of being in a railroad amphitheatre.

The proximity to the railroad was known at the time of the original purchase in 1954. A combining the above six item really means that there are no comparables on the lake with the unique combination of negative characteristics that this property has.

Points for consideration on Tract 4: very irregular shape and a shallow average lot depth of 46 feet less 20 feet for a legal setback make it non-buildable. The proximity to the West Shore State Park, the only public access campsite on the entire lake, which has its public swimming area buoyed across the front of this lot. The combination of boating activity from the state park boat launch and pressure from summer swimmers at state park all negatively impact that property. Only a small fishing boat can access this property in the summer due to the shallow bottom. The marshy, grassy beach area of this lot could be considered a wetlands. Ducks, turtles, frogs and other wildlife area seen in this area. The nature of this beach is not conducive to recreational use, such as swimming and boating.

The taxpayers request that Tract 4, their unimproved lot, be valued at \$140 per front foot for the footage at the high water mark, or as determined by the DOR at 198 front feet, or a valuation of \$27,720. This value would be comparable to the more desirable lots, also deemed non-buildable, on the opposite shore in the West Shore Subdivision (Taxpayers' Exhibit 18).

Mr. McBurney testified that, in his opinion, the lots in the West Shore Subdivision, referenced by Mr. Tate, are the most comparable to the subject lots in terms of size, topography and location (Taxpayers' Exhibit 20).

Taxpayers' Exhibit 21 is a spreadsheet prepared by Mr. McBurney, which is a combination of DOR assessment and plat data, and relevant to the West Shore Subdivision:

Lot	Transfer	Width	Depth	Assessment	\$/FF
20	1991	100	80	\$12,460	\$125
19	1980	100	80	\$12,469	\$125
18	1980	100	65	\$11,340	\$113
17	1980	100	65	\$11,340	\$113
16	1996	100	70	\$11,760	\$118
15	1988	100	80	\$12,460	\$125
14	1978	100	80	\$12,460	\$125
13N	1994	50	55	\$ 7,955	\$160
13S	1990	50	55	\$ 7,977	\$160
12	1992	100	50	\$ 9,940	\$ 99
11	2000	100	50	\$ 9,940	\$ 99
1	---	100	45	\$ 9,380	\$ 94
2	---	100	35	\$ 8,260	\$ 83
3	---	100	20	\$ 6,300	\$ 63
4	1992	100	18	\$ 5,880	\$ 59
5	1992	100	20	\$ 6,300	\$ 63
6	2000	100	30	\$ 7,700	\$ 77
7	2003	100	30	\$ 7,700	\$ 77
Tr 5	1963	210	100	\$177,764	\$ 846
2,19		50	238	\$293,550	\$5,871

According to Mr. McBurney, Lots 6 and 7 are the ones that are in closest proximity to the subject.

Taxpayers' Exhibit 22 is a six-page document containing detail on the three deed transfers that have occurred in the West Shore Subdivision in the past eight years (Lots 6, 7 and 11 above). The deed states that "No buildings or sanitary facilities are to be built on any of these lots..." "Right of access to and from the land

is not established..." Lot 11 sold for \$20,000 in 2000. The sale included a sailboat. The seller and the buyer agreed that the appropriate allocation was \$14,000 to the sailboat and \$6,000 to the land. Lot 6 sold for \$9,000 in 2000. The warranty deed also contains the notation: "No buildings or sanitary facilities are to be built on any of these lots...", and "the land shall have access from Whitefish Lake only..." Lot 7 sold for \$35,000 in 2003. Mr. McBurney agreed with the DOR contention that market values are escalating markedly on Whitefish Lake. "People are willing to pay a price that would be comparable to a boat slip and then add some unspecified premium for the fact that they are getting a picnic spot in addition." (Don McBurney testimony, State Tax Appeal Board hearing, September 14, 2004).

Taxpayers' Exhibit 23 is pertinent to the subject Tract 3. The quitclaim deed for Tract 5, Block 1, Lake Park Addition to Whitefish, Montana does not specify an exact measurement or an amount of lake frontage. The first page of the exhibit contains a map with a hand-drawn estimate of the lake frontage for Tract 5 by the Flathead County plat room. The map references approximately 210 feet of lake frontage for Tract 5. The DOR assessment for Tract 5 is approximately \$178,000, or \$848 per lake front foot. The taxpayers contend that this tract is superior to the subject lots for the reasons cited above. This assessment is far in excess of that of the subject Tract 3, an inferior lot in the taxpayers'

view. For Tract 4, a value of \$6,000 to \$9,000, or a maximum of \$35,000, is appropriate in view of the information presented in Taxpayers' Exhibit 22 above: the most comparable sales that Whitefish Lake has to offer. Based upon a dollar per front footage basis, the taxpayers argue that a value of \$27,000 would be appropriate for Tract 4.

Taxpayers' Exhibit 24 contains summary and consideration points for both Tracts 3 and 4:

- The shallow, muddy bottoms for both TR3 and TR 4 are among the worse on the West shore for swimming and boating. . . hence, the name, Dog Bay.
- Beach quality is not good, ranging from marshy to a rock veneer over clay, at best.
- The odd shape of both lots is detrimental to their value.
- The locations of the lots in the bay, looking across from Lion Mountain, limits the view of the main part of the lake. They have only a 30 to 35 degree view of the open part of the lake, compared to a 150 to 180 degree view for most other lots on the west shore.
- Property proximity across the water from the BNSF tracks give us the effect of being in a railroad "amphitheatre" with both sound and vibration day and night from numerous trains.
- The proximity to the public State Park with its public beach, boat launch, and 33 camping sites is a huge detriment to the value of the property. With spring and fall boating, and winter ice fishing, the Park has activity the year round.
- Combining the above six items means there are no "comparables" on the lake, with the unique combination of negative characteristics that this property has.

Points for consideration on Tract 4 (Unbuildable lot adjoining State Park)

- The very irregular shape, and shallow average lot depth (Avg. 46' less 20' setback from high water) of this lot render it unbuildable. This was agreed to in Sept. of 1985.
- TR4's proximity to the west shore State Park, the only public access campsite on the entire lake, which has its public swimming area buoyed across the front of this lot as depicted in the photos. The combination of boating activity from the State Park boat launch, and pressure from summer swimmers at State Park all impact TR4.
- When offered in 1985, the State declined to buy this property.
- Only a small fishing boat can access this property in the summer, due to the shallow bottom.
- The marshy, grassy beach area of this lot could be considered a wetlands. Ducks, turtles, frogs and other wildlife are seen in this area. The nature of this beach is not conducive to recreational use, such as swimming and boating.

We request that TR 4 (unimproved lot) be valued at \$140 per front foot for the footage at the high water mark as determined by the DOR 198 feet, a valuation of \$27,720 (\$40 X 198' = \$27,720). This is the same as requested earlier on Docket # FC-03-50. This would be comparable to the even better lots mentioned that are also unbuildable, on the opposite shore in the West Shore Subdivision. The higher quality of the West Shore Subdivision lots is offset by their lack of road access, which benefits TR4. Therefore we believe the value set on tr4 should not be greater than those \$140 per foot values that exist in the West Shore Subdivision.

Taxpayers' Exhibit 25 is a copy of the definitions of terms such as "irregular lot, non-buildable, and such influence factors as: excessive frontage, topography, size or shape, and economic" from on what the taxpayers referred to as the STAB website.

BOARD'S DISCUSSION

The first issue this Board was faced with is the fact that the taxpayer was prepared to argue for a lower value than was determined by the county board for PT-2003-106. The decision made by the county board set the value of the land at \$258,906. As indicated on the appeal form, the taxpayer accepted the DOR's value determination for the improvements. **§15-15-104. Appeal to state tax appeal board.** *If the appearance provisions of 15-15-103 have been complied with, a person or the department of revenue on behalf of the state or any municipal corporation aggrieved by the action of any county tax appeal board may appeal to the state board under 15-2-301.* **§15-2-301. Appeal of county tax appeal board decisions.** (1) *The county tax appeal board shall mail a copy of its decision to the taxpayer and to the property assessment division of the department of revenue. If the appearance provisions of 15-15-103*

have been complied with, a person or the department on behalf of the state or any municipal corporation aggrieved by the action of the county tax appeal board may appeal to the state board by filing with the state tax appeal board a notice of appeal within 30 calendar days after the receipt of the decision of the county board. The notice must specify the action complained of and the reasons assigned for the complaint. (Emphasis supplied)

The only appeal (PT-2003-106) received by this Board was made by the DOR. Therefore, pursuant to statute, the values properly before this Board is those as determined by the county board and the DOR.

In the case of PT-2003-107, county board did not establish a value, but rather attached a non-buildable status as a directive the DOR was expected to follow. By not assigning a value, the county board's decision is considered to be vague at best. The DOR asserts that its value determination for this parcel was based upon market data from property with attributes.

It is the opinion of this Board that based upon the market data presented, the best indication of value is that as established by the DOR. The taxpayer testified to a number of factors that could impact the market value of the subject parcels, i.e., proximity to the railroad, state park, and adverse beach conditions. In order for this Board to identify any value reduction, it must be acknowledged by actual market data. This

Board was not presented with sufficient data that would suggest that the DOR's value does not meet the market value standard pursuant to **§15-8-111 MCA. Assessment - market value standard - exceptions.**

CONCLUSIONS OF LAW

1. The State Tax Appeal Board has jurisdiction over this matter.
§15-2-301 MCA.
2. **§15-8-111 MCA. Assessment - market value standard - exceptions.** (1) All taxable property must be assessed at 100% of its market value except as otherwise provided. (2) (a) Market value is the value at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts. (b) If the department uses construction cost as one approximation of market value, the department shall fully consider reduction in value caused by depreciation, whether through physical depreciation, functional obsolescence, or economic obsolescence.
3. **§15-2-301 MCA, Appeal of county tax appeal board decisions.** (4) In connection with any appeal under this section, the state board is not bound by common law and statutory rules of evidence or rules of discovery and may affirm, reverse, or modify any decision.
4. It is true, as a general rule, that the appraisal of the

Department of Revenue is presumed to be correct and that the taxpayer must overcome this presumption. The Department of Revenue should, however, bear a certain burden of providing documented evidence to support its assessed values. (Western Airlines, Inc., v. Catherine Michunovich et al., 149 Mont. 347, 428 P.2d 3, (1967)).

5. The Board finds that the evidence presented supports its conclusion that the decision of the Flathead County Tax Appeal Board shall be reversed. The appeals by the DOR are granted.

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ORDER

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the subject property shall be entered on the tax rolls of Flathead County by the local Department of Revenue office at the values of:

PT-2003-106	Land - \$314,325
PT-2003-107	Land - \$ 81,081

The appeals of the DOR are hereby granted.

Dated this the 27th day of December, 2004.

BY ORDER OF THE
STATE TAX APPEAL BOARD

(S E A L)

GREGORY A. THORNQUIST, Chairman

JEREANN NELSON, Member

NOTICE: You are entitled to judicial review of this Order in accordance with Section 15-2-303(2), MCA. Judicial review may be obtained by filing a petition in district court within 60 days following the service of this Order.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 27th day of December, 2004, the foregoing Order of the Board was served on the parties hereto by depositing a copy thereof in the U.S. Mails, postage prepaid, addressed to the parties as follows:

Bruce D. and Susan K. Tate
1800 West Lakeshore Drive
Whitefish, Montana 59937

Office of Legal Affairs
Department of Revenue
Mitchell Building
Helena, Montana 59620

Flathead County Appraisal Office
100 Financial Drive Suite 210
Kalispell, Montana 59901-6090

James Eddington
Chairman
Flathead County Tax Appeal Board
P.O. Box 1313
Kalispell, Montana 59903

DONNA EUBANK
Paralegal